

December 8, 2009

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 96-45
WC Docket No. 03-109

NOTICE OF EX PARTE PRESENTATION

Dear Ms. Dortch:

On December 7, 2009, F.J. Pollak, President and Chief Executive Officer, TracFone Wireless, Inc., Harmony Knutson of Navigators Global, LLC, and I met with Priya Aiyar, Legal Advisor to Chairman Genachowski and with Sharon Gillett, Chief, Wireline Competition Bureau. During the meeting, we provided an overview of TracFone's business and its services, particularly its provision of SafeLink Wireless® Lifeline service as an Eligible Telecommunications Carrier (ETC). We also discussed several matters pending before the Commission in the above-captioned dockets. Those matters include TracFone's proposal to modify Section 54.403 of the Commission's rules governing Universal Service Fund Lifeline support available to ETCs, TracFone's petition for modification of the annual verification condition imposed by the Commission on TracFone, and TracFone's request for clarification of the "one-per-household" rule as applicable to Lifeline service provided to residents of homeless shelters and other group living facilities. The views expressed were consistent with those set forth in TracFone's prior filings in these dockets. We provided a written presentation which summarized those positions. A copy of that presentation is attached.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically. Please direct any questions regarding this letter or the attached presentation to undersigned counsel for TracFone.

Sincerely,



Mitchell F. Brecher

Attachment

Cc: Ms. Priya Aiyar
Ms. Sharon Gillett

Attachment

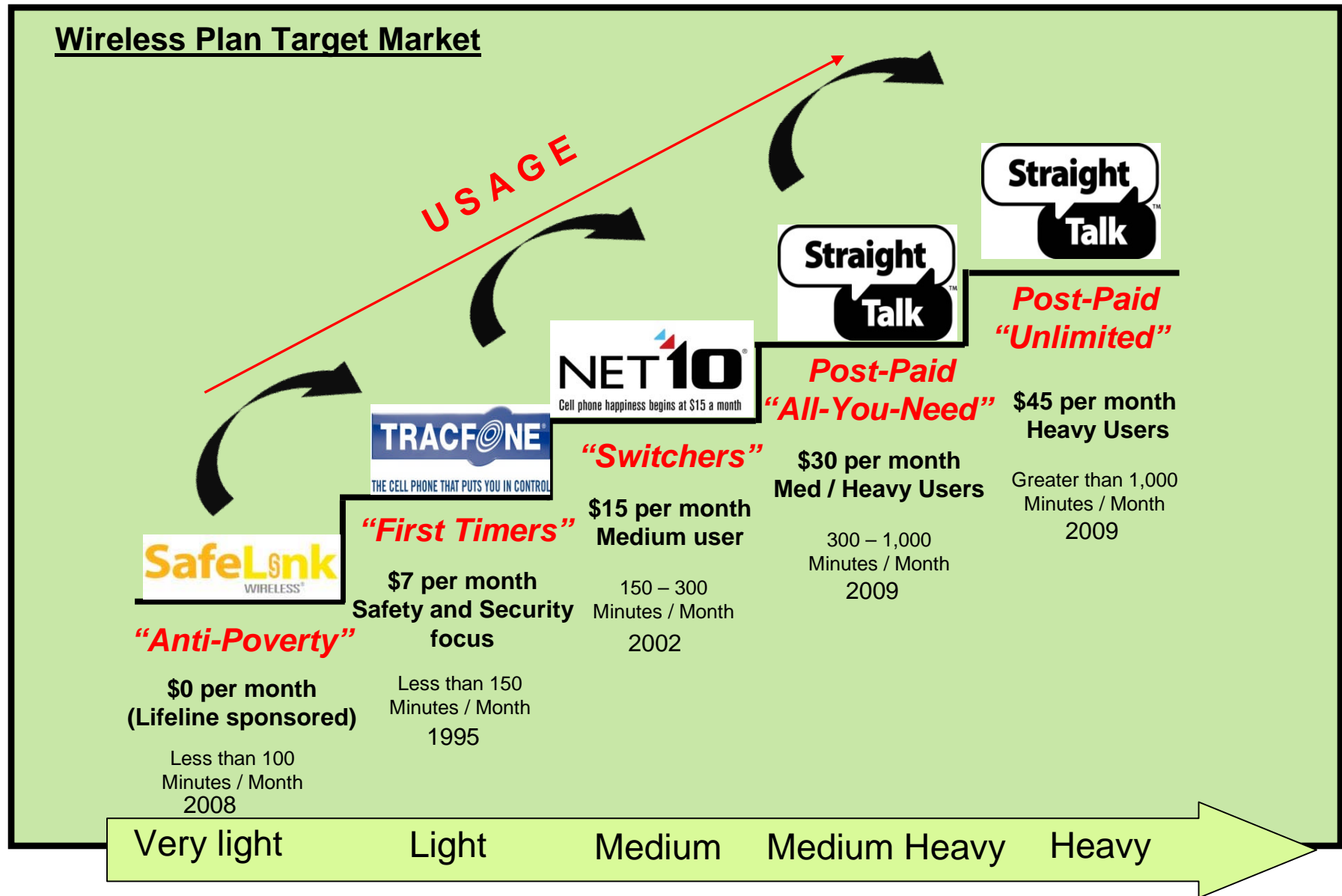
December 2009
TracFone Wireless Overview



TracFone Wireless, Inc. – Our History

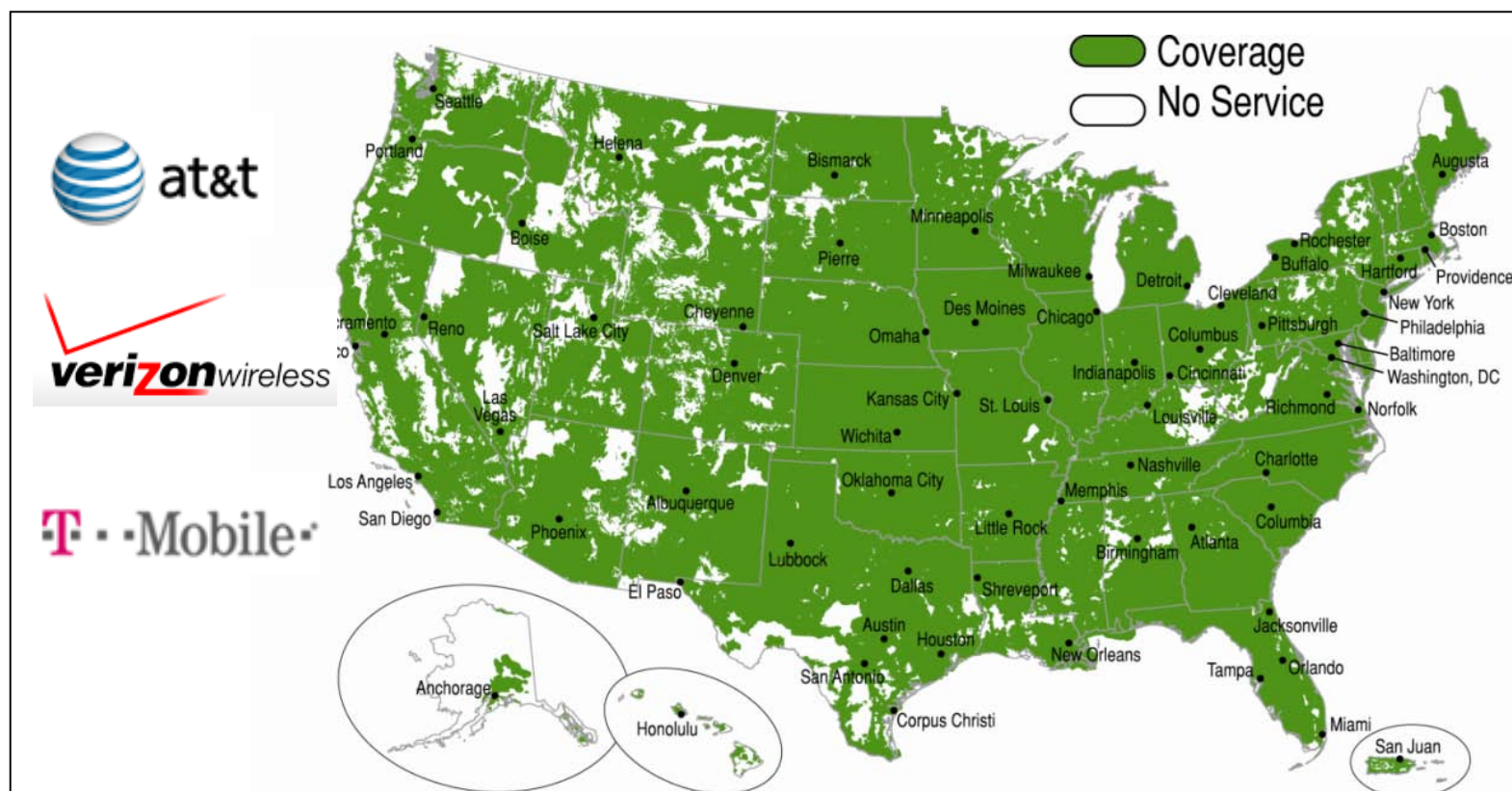
- Who We Were
 - Handset Based technology – you actually “track” your minutes
 - Originally partnered with 71 carriers
- Who We Are Today
 - 98% owned by America Movil (NYSE:AMX) and Carlos Slim
 - Based in Miami. 600 full time employees
 - Over 13,000,000 customers we are one of the fastest growing wireless carrier
 - TracFone Wireless Inc. is the largest no-contract cell phone provider in the US, and has been since its inception 12 years ago
 - We have over 2x as many customers as our nearest competitor
- Where We Are Today
 - TracFone’s brands are available in more than 80,000 retail locations nationwide. It has long been the leading cell phone sold at Walmart, Kmart, Dollar General, Family Dollar and many other chains
- What We Stand For
 - TracFone believes cell phone ownership is a right, not a privilege, and it is committed to making cell phones available to everyone
 - We believe that people should not have to overpay for their wireless phone service and we subscribe to the Wal-Mart philosophy “Save Money, Live Better” or Target’s – “Expect More, Pay Less”
 - Four brands deliver unparalleled access for the underserved

TracFone Brands Now Serve Every Type of Cell Phone User



TracFone Provides Cell Phones in More of the US Than Any Other Carrier

- MVNO – We use everyone else's cell towers and they get credit for our activations
- TracFone works in close partnership with AT&T, Verizon Wireless, T-Mobile and other major carriers, who carry its signals. Because of its aggregated distribution network, TracFone is able to provide cell phone service in more ZIP codes than any other carrier
- With no towers to maintain, TracFone is able to maintain a lean infrastructure and thereby provide cell phone service to a very large segment of the population who would otherwise not be able to afford cell phone access
 - We can profit from customers that spend \$10 a month



SafeLink Wireless – Lifeline Service

- SafeLink Wireless offers qualifying Lifeline Households a Free Cell Phone and 68* Free minutes a month. This unique version of Lifeline has been a tremendous success in the states that have launched the service.
 - SafeLink Wireless is available in 20 states today and in DC
 - SafeLink Wireless has been approved in 3 other states that should launch later this year
 - Applications are pending in almost every other state and in Puerto Rico
- Operational / Program Challenges
 - Before SafeLink Wireless, most Lifeline programs were provided solely by the incumbent telephone companies who are regulated by the state PUC's
 - SafeLink Wireless is a wireless program, not regulated by states, funded from a Federal Fund, but ETC approvals are granted by the states who by nature want to impose their own regulations and do not always recognize Federal Law
 - Based on experience gained during the first year of offering SafeLink, TracFone has identified certain areas where FCC-imposed requirement could be modified and improved upon.
 - The success of SafeLink Wireless is in part a by-product of TracFone's ability to keep costs low, so it can offer a totally free service and advertise this service aggressively. Self-Certification is critical to keep enrollment costs low.

SafeLink Wireless – Pending FCC Matters

1. Petition to uncouple the amount of Lifeline support TracFone can receive from the ILEC's SLC.
 - This rule may have made sense when the only provider of Lifeline was the ILEC but no longer makes sense in an era of ETCs providing Lifeline who are not ILECs and not subject to Subscriber Line Charge requirements
 - SafeLink Wireless is a national program and its maximum funding should be based on the program's merits, not on the ILEC's SLC
 - TracFone has petitioned the FCC to modify Section 54.403 of its rules. Under the proposed rule change, all ETCs would be entitled to the full Tier One support of \$6.50 (the capped SLC amount) without regard to any ILEC's SLC, provided that the ETC provides an additional Lifeline benefit of \$3.50. TracFone also requested waiver of the rule pending the rulemaking proceeding.
 - This rule change or waiver will permit TracFone to provide a \$13.50 Lifeline benefit (68 minutes per month) to customers everywhere

SafeLink Wireless – Pending FCC Matters

2. Petition to Modify Annual Verification Condition

- All ETCs are required to verify annually their Lifeline customer's continued eligibility for Lifeline based on a statistically-valid sample of their Lifeline customers (Section 54.401(c)(2)).
- TracFone is also subject to a special condition that it verify annually that each of its Lifeline customers are i) head of household and ii) receive Lifeline-supported services only from TracFone ([TracFone Forbearance Order](#), September 2005).
- In April 2009, TracFone petitioned to modify its annual verification condition to make it consistent with the annual verification rule applicable to all ETCs, i.e., that TracFone should be allowed to verify that its customers remain head of household and receive Lifeline-supported services only from TracFone, based on a statistically-valid sample of its customers.
- By making the annual verification requirements consistent, the Commission would "level the playing field" and avoid subjecting singled out providers such as TracFone to a burdensome requirement to contact all of their thousands of customers.

SafeLink Wireless – Pending FCC Matters

3. Request for Clarification – Lifeline service should be available to residents of homeless shelters and other group living facilities
 - By letter dated July 17, 2009, TracFone asked FCC to clarify that the “one-per-household” Rule should not preclude multiple unrelated residents of homeless shelters and other group living facilities (nursing homes, assisted living centers, etc) from obtaining wireless Lifeline service.
 - FCC has received comments on that request –virtually all comments are favorable.

SafeLink Wireless – Other Regulatory Concerns

911 Fees - Should they be Applicable to Prepaid Wireless Lifeline Service

- Most state laws impose 911 fee obligations on users of wireless service and require that they be collected through surcharges on customer bills.
- With prepaid services, including TracFone's SafeLink Wireless® service, there are not customer bills and therefore, no fee collection mechanism.
- The service is paid for, not by the customers, but by the Federal Universal Service Fund.
- Who should pay the 911 fees?
 - The customer (if so, how to collect)?
 - USAC?
 - TracFone?
- Solution: Do not assess 911 fees on Lifeline service provided at no charge to customers. This would be analogous to the Universal Service Fund -- Lifeline customers are not subject to Subscriber Line Charges and therefore no USF-assessable revenue is derived from Lifeline customers

SafeLink Wireless – Other Regulatory Concerns

FCC Should Establish Guidelines and Time Frames for State ETC Designation of Wireless ETCs

- Under Section 214(e)(2) of the Communications Act, State commissions are authorized to designate ETCs.
- SafeLink Wireless® is a federally-funded Lifeline program. TracFone has not sought state universal service fund support in any state.
- Section 332(c) of the Act forbids states from regulating market entry by commercial mobile radio service providers.
- Nonetheless, some states are using the ETC designation process to “regulate” entry by TracFone and to impose traditional state telephone service regulatory requirements on its Lifeline program.
- In addition, some state ETC processes are unnecessarily prolonged (in one case, TracFone’s ETC petition has been pending for more than 16 months).

SafeLink Wireless – Other Regulatory Concerns

Examples

- In one state, the commission ordered briefing on the question whether the FCC's exercise of forbearance authority under Section 10 of the Act is applicable to and binding on that state. Intervening telephone companies AND the state commission staff submitted briefs asserting that the FCC's forbearance orders are not applicable to that state (the matter remains pending)
- In another state, the state commission staff has demanded the right to discover TracFone's highly proprietary contracts with its handset vendors and with its underlying carriers on the basis that it needs to determine TracFone's "costs" of service so that it can decide whether TracFone's offering of free handsets and free wireless service is in the public interest (note: the matter was further complicated when intervenors who include representatives of TracFone's competitors demanded a right to see the same documents).
- In yet another state, the state commission demanded that TracFone apply for a certificate of territorial authority (i.e., a certificate of public convenience and necessity) before it would even consider an ETC application. It then convened a hearing on the certificate of territorial authority application even though, pursuant to Section 332(c) of the Communications Act, the state commission has no authority to condition or deny market entry by a CMRS provider.

SafeLink Wireless – Other Regulatory Concerns

Other examples could be provided.

- The effect of these practices is to delay -- sometimes for many months or longer -- the availability of a wireless Lifeline alternative.
- TracFone does not advocate that the FCC take over the state ETC designation process. However, where states are acting unreasonably, allowing intervenors to engage in dilatory tactics for no reasons other than to delay a potential CMRS competitor from providing Lifeline service, the FCC can and should impose reasonable procedures and guidelines on the states.
- FCC supervision of state ETC designation process for CMRS ETCs is proper since CMRS service, unlike wireless local exchange service, is not subject to state entry or rate regulation.

SafeLink Wireless – Other Regulatory Concerns

Suggestions:

- If a state commission has not acted on an ETC application from a wireless provider within 90 days of filing, the applicant should have the right to petition the Commission to direct the state commission to act within 30 days. Such a “shot clock” approach would expedite the state ETC process and limit the opportunities for third parties to interfere with or delay availability of new Lifeline services in those states.